

REMARKS

Claims 23-37 are pending the application; all claims stand rejected.

The Examiner has indicated that Applicant's first 131 declaration appears to be in order in all respects except that the Examiner takes the position that Applicant has not demonstrated reasonable diligence between conception and constructive reduction to practice (filing date 6/2/99) for the critical period just before the Web Cert 2 reference date of 5/20/99 and the filing date of 6/2/99. Applicant respectfully maintains his traverse; however, in the interest of expediting an indication of allowable subject matter, Applicant now submits the following.

The Examiner indicates that what is required is a recitation in the declaration of affirmative acts that account for the alleged reasonable diligence. Applicant respectfully submits that, brief though it be, Applicant's first declaration paragraph 6 does in fact recite, both explicitly and by implication, affirmative acts that account for reasonable diligence.

This period is so short, and during which Applicant was also busily acting as his own attorney and was preparing his patent application, which the cases also say counts toward diligence, that Applicant believes that nothing more is required to satisfy the requirements of diligence. Applicant therefore maintains his request for reconsideration of the first declaration and withdrawal of the Examiner's diligence objection thereto.

Nonetheless, and in the interest of a speedy agreement on allowable subject matter, Applicant herewith submits a second declaration containing sworn testimony of further affirmative acts, to which is attached additional corroborative documentary evidence in the form a page printed from an Excel spreadsheet that was used contemporaneously by the inventor to track his time in this project. Applicant requests favorable consideration of this second declaration and allowance of all claims.

Inventor Steven C. Robertson again testifies in his second declaration that at least as early as March 9, 1999 he realized while working in Kent, Washington USA the details of a system for providing an electronic gift certificate service for users over a distributed network. The gift certificate would have a plurality of merchant sites connected to the distributed network, each merchant site running at least one application to provide an online service to users over the distributed network; a plurality of user computers connected to the distributed network, each user computer running at least one application to access the online service at a merchant site; a gift certificate authority site connected to the plurality of merchant sites, the gift certificate site including a user database and a merchant database, each database containing authentication information as to respective users and merchants, the users accessing the merchant sites from the user computers over the distributed network; a database which stores gift certificate data and transaction data related to particular gift certificates; and an authentication protocol for allowing the gift certificate site to authenticate users and merchants.

This subject matter is essentially the subject matter of both claim 1 and claim 23, and a date of 3/9/99 that is earlier than the constructive reduction to practice date of 6/2/99, and earlier than the cited reference date of 5/20/99, is therefore established for claims 1 and 23.

He again testifies that at least as early as March 9, 1999 he realized while working in Kent, Washington USA the details of a method for a user to purchase a gift certificate from an on-line gift certificate service. The method had the steps of: user enters a desired dollar amount to be applied to the gift certificate; user enters a user-selected PIN for authentication in a gift certificate redemption process; user provides payment information to gift certificate site for purchasing the gift certificate; gift certificate site validates user payment information; and user receives an order confirmation, including a unique gift certificate identification code.

This subject matter is essentially the subject matter of both claim 10 and claim 29, and a date of 3/9/99 that is earlier than the constructive reduction to practice date of 6/2/99, and earlier than the cited reference date of 5/20/99, is therefore established for claims 10 and 29.

This testimony is corroborated by the evidence of his pages 19-24 and 27 from his notebook dated from 3/9/99 to 3/13/99 and attached to his first declaration, review of which bears out his claim to earlier conception of the subject matter later embodied in claims 1 and 10, and 23 and 29, and also new independent claims 34 and 35.

Inventor Robertson now further testifies that he immediately got in touch with Gale Hurley in March 1999 and, over the course of time between 3/11 and 5/9/99, created work sessions with her to review and discuss the above referred to notebook pages and his vision for the gift certificate system and method, just as discussed above and in his declarations. He testifies that these reviews with Ms. Hurley were invaluable to him in beginning to flesh out the ideas as he had conceived them, and also in testing his hypotheses and proving them valid to his satisfaction, so as to bring them to the level disclosed in the patent application.

He testifies that in about the middle of March 1999, while he was also still mentally fleshing out his conceptions in discussion with Ms. Hurley, and in other work that is documented below, how he began preparation of his own patent application on this technology, acting as his own agent. He testifies that many of his early draft patent application files and working data model and data flow diagrams and html prototype pages, as well as object models, mindmaps, user interface designs and the like (all created by him in the March to early May 1999 time frame) have since been lost in a hard drive failure subsequent to his filing of the application. He did however continue to iron out bugs in my thinking about the actual practice of my invention during the critical time period, as well as making needed improvements in his patent application right through 6/2/99 when he filed it with the USPTO.

At present what he has documented is that he spent at least the following times on preparation and revision of specification and drawings for the application he filed June 2, 1999 (see printout of spreadsheet page he used to keep track of his time during that period, attached to his second declaration): 5/21 - 4 hours on the spec; 5/22 2 hours on the spec, 0.5 hour on diagrams; 5/29 - 1 hour on the spec, 8 hours diagrams; 5/30 - 4 hours on the spec; 5/31 - 2 hours on the spec; 6/1 and 6/2 - 1 hour each on the spec. Although Applicant cannot presently document the time he diligently spent between 3/13 and 5/21/99, he does in fact testify under oath that he did in fact spend the time in like manner, and that he did contemporaneously document it, but that he has since lost those earlier records. In light of his testimony and the very brief period of time at involved in this case, Applicant believes that he has adequately stated his case for diligence.

Thus he establishes that he worked diligently on bringing his conceptions to fruition, all as now set forth in his 1999 application, and that he worked on both the practice of the technology and the preparation of his own patent application continuously from his conception in March 1999 until he filed the application in June.

It is therefore corroborated in accordance with section 131 that the invention was made on a date earlier (3/11/99) than the cited reference date of 5/20/99, and that reasonable diligence was applied between conception and constructive reduction to proactive on 6/2/99. The WebCertificate.com 2 reference dated 5/20/99 is therefore not available as a section 103a reference to be cited against claims 23-37. Claims 23-37 are therefore believed to be in condition for allowance, and Applicant respectfully urges entry and early favorable action on them.

Applicant respectfully requests reexamination of all rejected claims and early favorable action on them. After next examination, Applicant requests the favor of a call to Applicant's attorney Patrick Dwyer at (206) 550-4049 to set up an Interview to expedite a definition of allowable subject matter.

Respectfully submitted,



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